IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 26427 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE D.A.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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S T KARMACHARI DHIRAN ANE GRAHAK SAHAKARI MANDALI LTD. - Petitioner(s)

Versus

GUJARAT STATE ROAD TRANSPORT CORPORATION.THRO.G R ATORIYA & 1 - Respondent(s)

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Appearance :
MR SHIRISH JOSHI for Petitioner(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 1 - 2.
MR HARDIK C RAWAL for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA

Date : 03/05/2007

ORAL JUDGMENT

1. In light of the view that the Court is inclined to take the matter is taken up for final hearing and disposal. RULE. The learned advocate for the respondents is directed to waive service.

2. The petitioner, a Co-operative Society, has as its members employees of the respondent-Gujarat State Road Transport Corporation (GSRTC). The principal activity of the petitioner-Co-operative Society is to grant advances to its members. The mode of recovery is collection of advanced amount in installments (as per contract between the Society and the Member concerned) by way of deduction from the salary paid to the member employee by GSRTC. The present dispute between the parties arose in light of the default committed by GSRTC in making payment of the amounts already deducted from the salaries of various employee members of the petitioner-Society and retaining the funds so collected instead of handing over to the petitioner-Society. It is an

admitted position between the parties that GSRTC has retained funds belonging to the petitioner-Society. The explanation of GSRTC for retention of such money being financial exigences faced by GSRTC.

3. In the past, there was litigation on this count between the parties and vide order dated 24.10.2005 made in Special Civil Application No.18875 of 2005 (Annexure-D) and order dated 29.06.2006 in Special Civil Application No.21180 of 2005 (Annexure-E), this Court has repeatedly directed GSRTC to pay off the entire principal amount with interest at the rate of 11% and 10% respectively in the aforesaid two orders. However, GSRTC has admittedly failed to comply with the said orders made by this Court and the principal sum has grown beyond figure recorded by this Court in the earlier orders.

4. In the backdrop of the aforesaid facts and circumstances after hearing the learned advocates for the parties, the Court had directed the learned advocate for GSRTC to place on record a consolidated

statement in the form of chart placing on record the details in relation to various amounts outstanding division wise, and other details along with a proposal on affidavit stating as to within which period GSRTC intends to clear the arrears division wise.

5. It is necessary to take note of the fact that GSRTC has cleared off outstanding dues of Junagadh Division and the Court expects the same sincerity and earnestness in discharging the liability qua each division as undertaken by GSRTC.

6. In the affidavit dated 10th April, 2007, the Divisional Controller, GSRTC, Bharuch Division has stated as under:

> *"I say and submit that the total outstanding principal amount of the petitioner credit society is Rs.33.26 Lakh as on 31.03.2007. I say and submit that the aforesaid outstanding principal amount of the petitioner credit society shall be paid*

to the petitioner society in six equal monthly installments starting from May, 2007 onwards. I also say and submit that the regular monthly payment of the amount deducted shall be done in future.

7. Thus, it can be seen that GSRTC has undertaken to;

i) Clear off the outstanding principal amount due to the petitioner-Credit Society by six equal monthly installments commencing from May, 2007 onwards, and;

ii) Make regular monthly payment of the amount deducted henceforth.

8. The limited issue that would then survive is as to whether the petitioner-Credit Society is entitled to any interest on the belated payment of the outstanding sum, and if yes, the appropriate rate of interest. On behalf of the petitioner-Credit Society it was submitted that because of the default

in making payment of the money deducted by GSRTC, the petitioner-Credit Society, and the Society has been compelled to borrow amounts from third party for making advance to the members of the society, and the Society is required to pay interest on such borrowed amount at the rate of 12% per annum. It was, therefore, urged that the Court may not award any interest at a rate lower than the said rate, namely, 12% per annum.

9. As against that the learned advocate for GSRTC submitted that in order, as regards payment of interest would create further financial problems for GSRTC and might result in a situation where GSRTC may not be in a position to abide by the statement made on oath before this Court. Alternatively, it was submitted that in the event the Court made an order for payment of interest, in so far as computation is concerned, the interest should be calculated only from the date on which the salary was paid to employee and the amount deducted therefrom at the time of making payment, and from the first or fifth of every month as claimed by the petitioner-Society.

10. Having heard the learned advocates, it is apparent that GSRTC must be permitted to discharge its outstanding liability in the mode and manner stated in the affidavit dated 10th April, 2007. Hence, the following directions:

(1)GSRTC shall make payment of Rs.33.26 Lacs which is the outstanding amount as on 31st March, 2007 in six equated monthly installments commencing from May, 2007 onwards;

(2)GSRTC shall make regular monthly payment of the amount deducted from the salaries of the employees and such payment shall be made within three working days from the date of deduction;

(3) GSRTC shall make payment of simple interest on the outstanding amount at the rate of 9% per annum and the calculation of interest for this purpose shall be from the date of the payment of the salary and deduction of the amount concerned;

(4) Such interest shall be paid in six equal monthly installments which shall commence after the aforestated installments in Direction No.1 are over.

(5)Any default in payment of any monthly installment as undertaken by GSRTC shall entail increase in the rate of interest at the rate of 1% for every month of default and this amount shall be calculated by GSRTC on its own and paid as and when the installment is paid belatedly without any claim being required to be made on this count.

11. The Divisional Controller who has filed the affidavit dated 10th April, 2007 is directed to file an undertaking incorporating the aforesaid directions on or before 18th May, 2007.

12. The petition stands allowed in the aforesaid terms. Rule made absolute with no order as to costs.

(D.A.MEHTA, J.)

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